

It is contended on behalf of the respondent that a distance of 30 feet between the two vehicles was sufficient and safe in the circumstances of this case. If 30 feet was a safe distance to remain behind the vehicle ahead of the respondent, then what is the explanation for the collision? The sudden stopping of the appellant's motor van created an emergency for the respondent. He applied his brakes, took evasive action by swerving to the right and yet collided with the motor van and his scooter finished up 58 feet ahead of the van. Three possible inferences can be drawn from these facts on the assumption that 30 feet was a safe distance. First, that the respondent was driving without due care and attention and hence was late in taking preventive measures to avoid the collision. Secondly, that he was travelling at a speed in excess of 30 m.p.h. And thirdly, that he was travelling less than 30 feet behind the van. In our opinion, the real reason for the respondent being unable to avoid colliding with the van when it suddenly pulled up, was that he was travelling too close behind the van. The distance of 30 feet which separated the two vehicles was not a safe distance in the circumstances of this case. A reasonable prudent man riding a motor scooter at 30 m.p.h. would have kept much further away from the van because it is impossible for a scooter travelling at that speed to pull up in 30 feet. Quite apart from the fact that the respondent did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury, the respondent in the circumstances of this case owed a duty to the appellant to move with due care and on his own evidence he was clearly in breach of that duty.

In our judgment, there was contributory negligence on the part of the respondent and he must bear his proper share of responsibility for the injury sustained by him. Having regard to all the circumstances of the case, we assess the respondent's responsibility at 40 per cent and that of the appellant at 60 per cent. Accordingly the respondent is entitled to recover from the appellant only 60 per cent of \$76,624 i.e. \$45,974. The respondent will pay the appellant the costs of this appeal. The deposit of \$500 is to be paid out to the solicitors for the appellant.

Appeal allowed. Order accordingly.

Solicitors: Donaldson & Burkinshaw; R. Ramason.

SITHAMBARAN v. ATTORNEY-GENERAL

[O.C.J. (Tan Ah Tah J.) August 12, 1972]

[Singapore — Suit No. 2251 of 1970]

Administrative Law — Declaration — Whether dismissal from Police Force was ultra vires, null, void and inoperative — When subordinate officers can be represented by agent at a disciplinary inquiry — Whether plaintiff given a reasonable opportunity to be heard — Authority having power to dismiss in the Singapore Police Force — Police Regulations, 1959 reg. 7 — Constitution of Malaysia, Art. 135(2) — Police Force Ordinance, 1958, ss. 4(1), 54.

The plaintiff in this action sought for a declaration that his purported dismissal from the Singapore Police Force was *ultra vires*, null, void and inoperative, and that he was still a corporal and entitled to be remunerated as such.

It was argued on his behalf, *inter alia*: (1) that he was not permitted to be represented by an agent at the disciplinary inquiry; (2) that he was not given reasonable opportunity of being heard before he was dismissed; (3) that an Assistant Commissioner of Police had no power to dismiss him. It was contended that only the Commissioner had the power to dismiss the plaintiff. Counsel for the defendant submitted that under section 4(1) of the Police Force Ordinance, 1958, an Assistant Commissioner of Police had the power to dismiss the plaintiff.

Held: (1) regulation 7 of the Police Regulations, 1959, is silent on the question whether subordinate officers can be represented by anyone at an inquiry. On the authority of *Enderby Town Football Club Ltd. v. The Football Association Ltd.*,⁽¹⁾ the chairman of the inquiry had a discretion whether or not to allow the plaintiff to be represented by someone at the inquiry. But as the plaintiff on his own admission never raised the matter, the question of an exercise of discretion never arose;

(2) the plaintiff was given a reasonable opportunity of being heard before he was dismissed. There had been no contravention of Article 135(2) of the Constitution of Malaysia;

(3) section 4(1) of the Police Force Ordinance, 1958 did not confer on the Commissioner the power to delegate any of his powers. The effect of section 4(1) is that any act which may be done by the Commissioner may, subject to orders and directions, be done by an Assistant Commissioner of Police. The right of the Commissioner to give orders and directions is controlled by section 54 of the Police Force Ordinance, 1958, which provides, *inter alia*, that the Commissioner may make such orders not inconsistent with the provisions of the Ordinance as he may think expedient. Therefore, section 4(1) of the Ordinance conferred the power on the Assistant Commissioner of Police to dismiss the plaintiff from the Police Force.

Cases referred to:-

- (1) *Enderby Town Football Club Ltd. v. The Football Association Ltd.* [1971] 1 All E.R. 215.
- (2) *Attorney-General, Singapore v. Ling How Doong* [1969] 1 M.L.J. 154.
- (3) *V.C. Jacob v. Attorney-General* [1970] 2 M.L.J. 133.
- (4) *Government of the Federation of Malaya v. Surinder Singh Kanda* [1961] M.L.J. 121.

SUIT.

J. B. Jeyaretnam for the plaintiff.

Warren Khoo Leang Huat, (State Counsel) for the Attorney-General.

Cur. Adv. Vult.

Tan Ah Tah J.: The plaintiff joined the Singapore Police Force as a constable on or about the 3rd May 1954. On the 1st August 1960 he was promoted to the rank of lance corporal. Subsequently, on the 1st June 1964 he was promoted to the rank of corporal.

On the 1st September 1969 the plaintiff was served by sub-inspector Daud with a document containing three charges against him. The three charges were as follows:—

- “(i) You, V. Sithambaran, Cpl. 1514 are charged with conduct to the prejudice of good order and discipline in that you, on 26th April, 1969 at about 2.45 p.m. along Nee Soon Road, Singapore, accepted a present in the shape of money, to wit, \$2/- from one Goh Kee Yah, in order that you would not make a police report against one Teh Tiang Soy, the driver of motor-van SGA.9444 for a traffic offence and you have thereby contravened section 27(1)(c) of the Police Force Ordinance, 1958 and punishable under section 27(1) of the aforesaid Ordinance, 1958 (No. 32 of 1958).
- (ii) You, V. Sithambaran, Cpl. 1514, are charged with disobedience of orders in that you, at about 4.05 p.m. on 26th April, 1969 at the Duty Office, Radio Division, when searched were found to be in possession of cash in the amount of \$2/- contrary to Radio Division Standing Order No. 41 paragraph 6(b) and you have thereby committed an offence under section 27(1)(e) of the Police Force Ordinance, 1958 and punishable under section 27(1) of the aforesaid Ordinance, 1958 (No. 32 of 1958).
- (iii) You, V. Sithambaran, Cpl. 1514, are charged with disobedience of orders in that you as the Crew Commander of patrol car ‘M-54’ which was on patrol between 0710 hours and 1535 hours on 26th April 1969 failed to ensure that proper entries were made in the log-sheet of the said patrol car, contrary to Radio Division Duty Scheme No. 8, and you have thereby committed an offence under section 27(1)(h) of the Police Force Ordinance, 1958 and punishable under section 27(1) of the aforesaid Ordinance, 1958 (No. 32 of 1958).”

On the 19th September 1969 the plaintiff appeared before Mr. Koh Lian Wah, a Superintendent of Police, who had been appointed to conduct a disciplinary inquiry regarding the plaintiff's conduct. Mr. Koh read out the three charges to the plaintiff, who claimed trial on the first and third charges but pleaded guilty to the second charge. According to Mr. Koh's evidence in this case, he postponed the inquiry to the 26th September 1969 so that there would be time to call the witnesses and also in order to enable the plaintiff to prepare his case.

Mr. Koh duly proceeded with the inquiry which lasted several days. At the end of the inquiry the plaintiff was found guilty on the first and third charges.

By a letter dated the 18th October 1969 sent to the plaintiff by Mr. V.N. Ratna Singam, an Assistant Commissioner of Police, the plaintiff was informed that Mr. Koh had recommended that the plaintiff should be dismissed from the Singapore Police Force, that Mr. Ratna Singam concurred with the recommendation, that the plaintiff was reduced to the rank of constable and would be dismissed from the force with effect from the 20th October 1969.

On the 8th October 1970 the plaintiff commenced this action in which he claims a declaration that his purported dismissal from the Singapore Police Force is *ultra vires*, null, void and inoperative and that he is still a corporal and entitled to be remunerated as such.

The first argument put forward on behalf of the plaintiff is that he was not permitted to be represented by an agent at the inquiry. According to

A the plaintiff, when sub-inspector Daud served the document containing the charges on him, he asked sub-inspector Daud whether he could engage a lawyer or ask an Assistant Superintendent of Police to represent him and sub-inspector Daud replied that there were no provisions enabling him to do so and that he would have to answer the charges himself. Sub-inspector Daud has denied that the plaintiff asked him this question. He has stated that no question of representation was raised by the plaintiff. I accept the evidence of sub-inspector Daud on this point. In my opinion the plaintiff was not being truthful when he was giving evidence about his conversation with sub-inspector Daud.

C It should be noted that at the inquiry the plaintiff did not ask Mr. Koh whether he could be represented by a lawyer. If he really wished to be represented by counsel that was the most appropriate place in which the request for representation could be made. However the plaintiff admitted that he made no such request.

D The law as to legal representation before a domestic tribunal was stated by Lord Denning in *Enderby Town Football Club Ltd. v. The Football Association Ltd.*⁽¹⁾ at page 218 as follows—

“The case thus raises this important point: is a party who is charged before a domestic tribunal, entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party has no absolute right to be legally represented. It is a matter for the discretion of the tribunal. It is master of its own procedure; and, if it, in the proper exercise of its discretion, declines to allow legal representation, the courts will not interfere.”

F Regulation 7 of the Police Regulations, 1959 is silent on the question whether subordinate officers can be represented by anyone at an inquiry. On the authority of *Enderby Town Football Club Ltd. v. The Football Association Ltd.* (*supra*), it is clear that Mr. Koh had a discretion whether or not to allow the plaintiff to be represented by someone at the inquiry. But as the plaintiff on his own admission never raised the matter, the question of an exercise of discretion by Mr. Koh never arose.

H It should be added that the plaintiff was in my view not prejudiced or embarrassed because he was not represented by someone at the inquiry. Mr. Koh's evidence, which I accept, is that he assisted the plaintiff in cross-examining the witnesses. In my opinion there is no substance in the first argument put forward on behalf of the plaintiff.

I The second contention relied on by the plaintiff is that the evidence given at the inquiry was not translated into Tamil. It is true that the mother tongue of the plaintiff is Tamil but on his own evidence he attended various schools where the medium of instruction was English and he passed what was then known as the Standard VII examination. Before joining the police force he had to sit for an examination conducted by the commandant of the force. He passed the examination and was given a red tab to wear on his uniform. This red tab indicated that the policeman wearing it could speak English. He also wrote his reports in English. All these facts were stated by

the plaintiff in the course of his cross-examination. He alleged that he had difficulty in following the proceedings at the inquiry. I do not accept the plaintiff's allegation on this point. In view of his educational record and also having regard to Mr. Koh's evidence, I am satisfied that the plaintiff understood the proceedings at the inquiry.

The third point relied upon by the plaintiff is that he was not allowed to call his wife as a witness at the inquiry. According to the plaintiff, he informed Mr. Koh that he wished to call his wife to be a witness and Mr. Koh replied that his wife could not be a witness because she was a woman. On the other hand, Mr. Koh has given evidence to the effect that the plaintiff never indicated that he wished to call his wife as a witness. Mr. Koh has stated that he asked the plaintiff whether he had any witnesses and the plaintiff's reply was that he had none. Mr. Koh then wrote the words "Accused has no defence witnesses" in his record of the inquiry. I find it quite incredible that Mr. Koh could have told the plaintiff that he could not call his wife as a witness because she was a woman. I accept Mr. Koh's version on the question of calling witnesses and I reject the plaintiff's version as being untruthful.

The fourth argument put forward on behalf of the plaintiff is that he was not given an opportunity to make a statement at the inquiry. There is clearly no substance in this argument in view of the fact that according to Mr. Koh's evidence, which I accept, he recorded two statements which were made by the plaintiff. The first statement was made after Mr. Koh had read out to the plaintiff the statements which he had made to the Special Investigators R. Kallyapan and Ronnie Kwan of the Corrupt Practices Investigation Bureau. The second statement followed consecutively after the first statement and was made in response to the following question asked by Mr. Koh: "Have you anything else to say?"

The fifth point taken on behalf of the plaintiff is that he was not supplied with a copy of the evidence given by the witnesses. Counsel for the plaintiff did not argue this point or cite any authorities to support it. In my view there is no substance in the point.

The sixth argument put forward on behalf of the plaintiff is that he was not given a reasonable opportunity of being heard before he was dismissed.

Article 135(2) of the Constitution of Malaysia which applies to members of various services including the Singapore Police Force reads as follows:—

"(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

As various Indian authorities have been cited, it is necessary to refer to Article 311(2) of the Constitution of India which reads as follows:—

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

The difference in the wording of the two provisions is immediately apparent. In India before a member

A of the police force can be dismissed he must be given "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" while in Singapore he must be given "a reasonable opportunity of being heard."

In the present cause I find as a fact that after Mr. Koh had informed the plaintiff that he had found him guilty on the first and third charges he asked the plaintiff whether he had anything to say in mitigation which was recorded by Mr. Koh.

It is important to observe that in Singapore there is no decided case which expressly lays it down that the officer must be informed about the proposed dismissal before his plea in mitigation is heard.

The case of the *Attorney-General, Singapore v. Ling How Doong*⁽²⁾ involved somewhat unusual and special facts. In that case, after a disciplinary inquiry, a police officer was found guilty on two charges. He was fined the sum of \$50 on one charge and received a reprimand in respect of the other charge. He lodged an appeal against his conviction on both charges. The matter was eventually dealt with by the Public Service Commission which arrived at a decision to dismiss him from the Singapore Police Force. The police officer was not even aware that there was a possibility of a more severe punishment being meted out to him on the appeal. This is therefore a case of enhancement of punishment without due notice to the police officer and without giving him a reasonable opportunity of being heard. The case is not an authority for the proposition submitted by counsel for the plaintiff.

The case of *V. C. Jacob v. Attorney-General*⁽³⁾ was one in which a senior cleansing inspector was dismissed from the public service. He was informed that consideration was being given to the question of his dismissal from the service long before the committee of inquiry sat to consider the charges against him. In my view, this case is of no assistance to the plaintiff.

So far as Malaysian cases are concerned, the difference in the wording of the relevant provisions of the Constitution of Malaya and the Constitution of India was referred to by Thomson C.J. in *Government of the Federation of Malaya v. Surinder Singh Kanda*⁽⁴⁾ at page 128 and by Neal J. at page 134.

In the present case the plaintiff was in my view given a reasonable opportunity of being heard before he was dismissed. He was in fact given the same opportunity of being heard as is given to accused persons in the courts in Singapore after conviction but before sentence is passed. In my opinion there has been no contravention of Article 135(2) of the Constitution of Malaysia.

The seventh point relied upon by the plaintiff is that an Assistant Commissioner of Police had no power to dismiss him.

By Article 140(6)(b) of the Constitution of Malaysia the Police Force Commission was given power to delegate its powers or duties. By an Instrument of Delegation dated the 16th September 1963 powers

were delegated to the Singapore Police Force to be exercised in accordance with the provisions of the Police Force Ordinance, 1958 and regulations made thereunder.

Under section 10(2) of the Police Force Ordinance, 1958 a subordinate officer above the rank of constable may be appointed by the Commissioner of Police (hereinafter referred to as "the Commissioner").

Counsel for the plaintiff relies on Article 135(1) of the Constitution of Malaysia, the relevant part of which reads as follows: —

"(1) No member of any of the services mentioned in paragraph (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank."

It is therefore contended by counsel for the plaintiff that only the Commissioner had the power to dismiss the plaintiff.

Now section 4(1) of the Police Force Ordinance, 1958 provides as follows: —

"(1) Any act or thing which may be done, ordered or performed by the Commissioner under this or any other written law may, subject to the orders and directions of the Commissioner, be done, ordered or performed by the Deputy Commissioner, a Senior Assistant Commissioner of Police, or an Assistant Commissioner of Police."

Counsel for the defendant has submitted that under section 4(1) of the Ordinance an Assistant Commissioner of Police had the power to dismiss the plaintiff.

On the other hand, counsel for the plaintiff has referred to the marginal note to section 4 which reads "Delegation of powers." It should be noted that the same marginal note appears in relation to section 5 of the Police Force Ordinance No. 39 of 1941 as repealed and re-enacted by the Singapore Police Force Ordinance No. 29 of 1949. By section 5(1) of the Police Force Ordinance No. 39 of 1941 as so repealed and re-enacted, power to delegate was expressly given to the Commissioner. In my opinion, section 4(1) of the Police Force Ordinance, 1958 does not confer on the Commissioner the power to delegate any of his powers. The effect of section 4(1) is that any act which may be done by the Commissioner may, subject to his orders and directions, be done by an Assistant Commissioner of Police. The right of the Commissioner to give orders and directions is controlled by section 54 of the Police Force Ordinance, 1958 which provides, *inter alia*, that the Commissioner may make such orders not inconsistent with the provisions of the Ordinance as he may think expedient. It follows that if any of the Police General Orders made by the Commissioner are inconsistent with section 4(1) of the Police Force Ordinance, 1958 they are ineffective or null and void. In my opinion, section 4(1) of the Ordinance conferred the power on Mr. Ratna Singam to dismiss the plaintiff the Police Force. If the Commissioner desired it, the dismissal could have been done subject to his orders and directions, but the power to dismiss remained vested in Mr. Ratna Singam by virtue of section 4(1).

A The presence of the marginal note to section 4 of the Police Force Ordinance, 1958 did not, in my opinion, derogate from the power to dismiss which, as I have stated, remained vested in Mr. Ratna Singam. It is to be observed that section 4(2) of the Police Force Ordinance, 1958 confers certain powers of delegation on the Commissioner in the absence or incapacity of the Deputy Commissioner. The marginal note is therefore appropriate in relation to section 4(2).

B The eighth and last point relied upon by the plaintiff is that the findings at the inquiry were so unreasonable that no reasonable person could have made such findings. All I need say on this point is that the inquiry was properly conducted, that Mr. Koh did nothing in excess of his jurisdiction and that his findings were reasonable.

C In my judgment, there is no substance in any of the eight points put forward on behalf of the plaintiff.

D The plaintiff's claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: J. B. Jeyaretnam & Co.

OSMAN BIN ALI v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.)

September 11, 1972]

[Singapore — Criminal Appeal No. 15 of 1971]

F *Penal Code, s. 300, Exception 7 — Murder — Defence of diminished responsibility.*

G *Criminal Law and Procedure — Defence of diminished responsibility raised — Rebuttal evidence — Whether prosecution entitled to call evidence after close of defence case — Practice of court.*

H The appellant was tried in the High Court of two judges on two charges of murder. Autopsies performed on the two dead bodies revealed that the cause of death in each case was asphyxia from strangulation and the pathologist who performed the autopsies was of the opinion that the likely position of the assailant was behind the deceased in both cases and that a rope was used. The appellant admitted causing the death of both deceased by strangulation with a piece of rope but maintained that he caused their death in circumstances which did not constitute the offence of murder. The appellant gave evidence on oath and claimed that in each case he pushed the rope from in front of the deceased against the throat with no intention to cause death and was not conscious of the fact that he had a rope in his hands. The main defence, however, was one of diminished responsibility which, if found proved, would have, under Exception 7 of section 300 of the Penal Code, reduced the offence committed to one of culpable homicide not amounting to murder. Medical evidence was called on behalf of the appellant in support of the defence of diminished responsibility. After the defence closed its case, the trial judges allowed the prosecution to call four witnesses who gave evidence in rebuttal of the defence of diminished responsibility. At the conclusion of the trial, the judges rejected both defences and found that the appellant "strangled both the deceased from behind them and in each case it was a deliberate conscious act of strangulation". The appellant was convicted on both charges of murder and sentenced to death.

On appeal, it was contended on behalf of the appellant that the prosecution was permitted to call evidence in rebuttal